

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

2011 AUG 25 P 12: 50

IN THE MATTER OF THE HEARINGS CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

APPLICATIONS OF BURNETT OIL CO., INC. FOR
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.

Case Nos. 14673 & 14674

APPLICATIONS OF COG OPERATING LLC FOR
NON-STANDARD OIL SPACING AND PRORATION
UNITS AND COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.

Case Nos. 14706-14718

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by applicant as required by the Oil Conservation Division.

APPEARANCES

APPLICANT

Burnett Oil Co., Inc.
Suite 1500
Unit 9
801 Cherry Street
Fort Worth, Texas 76102

Attention: William D. Pollard, President
(817) 332-5108

APPLICANT'S ATTORNEY

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Robert C. Grable
Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
(817) 878-3550 (phone)
(817) 878-9280 (fax)

OTHER PARTY

Hudson Oil Company of Texas
c/o Burnett Oil Co., Inc.

James Bruce and Robert C. Grable

OPPONENT

COG Operating LLC

OPPONENT'S ATTORNEY

Ocean Munds-Dry

STATEMENT OF THE CASE

APPLICANT

Overview: These cases involve the Glorieta-Yeso formation in Sections 12, 13, and 24, Township 17 South, Range 31 East, NMPM. Burnett Oil Co., Inc. ("Burnett") and Hudson Oil Company of Texas ("Hudson") seek orderly development of the reservoir in these three sections of land (the "Area"), with Burnett named operator for the Area.

Burnett and Hudson own or control approximately 2/3's of the working interest within the Area, while COG Operating LLC ("COG") controls 1/3. The parties have been negotiating over drilling and operating in the Area since November 2010, but have failed to reach agreement. A chronology of contacts is attached hereto as Exhibit A.

COG is a very aggressive public company touting its drill site inventory to stock analysts, and maintaining the highest rig count of any company in the Permian Basin. Burnett and Hudson are small, private companies. Burnett and Hudson have both operated in New Mexico for many decades, and Burnett has been active as an operator in the Yeso trend for over 10 years. At a recent Division allowable and well density hearing, Burnett presented its case for using different drilling and completion approaches than COG, which demonstrated better results than those of COG. At the very least, Burnett is a competent operator in the trend and has drilled and completed almost one hundred vertical and horizontal Yeso. Burnett presented compelling evidence at the allowable and well density hearing that 10-acre spacing has created economic waste and is accelerating the increase in gas/oil ratios, which is harmful to ultimate oil recovery.

After receiving two well proposals from Burnett in January 2011, COG responded by sending 47 vertical well proposals to Burnett and Hudson. COG representatives also stated that they would insist on drilling down to 10-acre density, and would not yield from this position. At an Division hearing in May 2011 on Burnett's first two pooling proposals (Case Nos. 14640 and 14641), COG stated that all vertical well proposals in the Area should be denied, and that it would be filing horizontal drilling applications for triple horizontal laterals. (Nonetheless, COG has not withdrawn its vertical well proposals, nor has it canceled its vertical well APDs).

Thirteen of COG's triple horizontal wells are part of this hearing. Neither COG nor any other company has ever drilled triple lateral horizontals to any formation in the state of New Mexico. Further, to the best of Burnett/Hudson's knowledge, no triple lateral horizontal wells

have ever been issued a drilling permit in the New Mexico. The method is replete with risks in both drilling and completion, and presents numerous possibilities for cost over-runs and production inefficiencies. If COG is truly interested in using this technology, why haven't they done so on properties that they control and operate, including direct offsets to the Area? Burnett/Hudson believe that COG is using the proposals as a method to bully Burnett/Hudson, smaller private companies that COG wants out of the way so they can steam-roller the fairway with their development plan. COG is using these tactics to intimidate and, in a "confiscatory" way, force Burnett/Hudson to opt out of the drilling program. Burnett/Hudson believe COG's approach is wasteful and imprudent.

Burnett/Hudson are not opposed to the use of new technology. Indeed, Burnett has drilled more horizontal wells in this part of the Yeso trend than any other operator. However, Burnett believes that a prudent plan of development should initially contain vertical wells, to gather important information on which to base future horizontal drilling. Drilling and stimulation methods should be monitored to allow for improvements, rather than using a rapid-fire "cookie cutter" approach. For example, COG does not even routinely log all of their wells with open hole logs (about 1 in 4 wells). Their stimulation approaches are based on interval stimulation without consideration of net pay criteria. Such approaches do not provide sufficient data as criteria for planning horizontal drilling programs. COG's triple lateral program provides no pre-drilling data from vertical wells, except those from nearby sections, where they have used "cookie-cutter" approaches.

Despite COG's stated preference for triple lateral horizontals in this area, publicly it makes different statements. Its CEO, Tim Leach, is quoted in a recent quarterly stock analyst conference call: "I think what you'll see us do though is, in the early stages, we will drill single laterals and single wellbores to gather information because you really have to model..." This quote relates to the Wolfcamp in the Delaware Basin, but is equally true for the Yeso, where very little horizontal drilling has been done in the Blinebry interval. In addition, Mr. Leach was asked to make comments on horizontal drilling in the Paddock (the upper member of Yeso). He responded, "That's something that we and other industry players are continuing to look at and drill some wells. It's not a meaningful part of what we are doing right now." This implies that COG is not even interested in drilling horizontal wells in the Paddock section of the Yeso at this time, yet one of the legs of their proposed 13 triple laterals targets the Paddock section.

Because the area contains potentially endangered species habitat, the Bureau of Land Management ("BLM") wishes to minimize the surface footprint on the properties. This can be most effectively accomplished by having only one operator, avoiding redundant infrastructure, and horizontal drilling in the future. The BLM has given preliminary approval of the Taylor Draw Federal Unit, which names Burnett Oil Co., Inc. as operator, to accomplish these goals.

Burnett's unit Plan of Development will include the use of horizontal wells. However, Burnett believes that single laterals will be less expensive and present fewer risks in drilling and completion. This is proven effective technology. Complete analysis of such horizontal drilling programs will be presented with the Plan of Development for the Taylor Draw Unit, which will be formulated after the drilling of the initial obligation well for the unit. As a result, in addition

to the wells which are the subject of Case Nos. 14640 and 14641 (heard this past May), it has proposed the following wells:

1. Case No. 14673: Burnett Oil Co., Inc. seeks an order pooling all mineral interests from 4230 feet subsurface to the base of the Glorieta-Yeso formation underlying the SE/4SE/4 of Section 24, Township 17 South, Range 31 East, NMMP, to form a standard 40-acre oil spacing and proration unit for all pools or formations developed on 40-acre spacing within that vertical extent. The unit is to be dedicated to the proposed Nosler Fed. Well No. 3, to be drilled at an unorthodox location 890 feet from the south line and 1190 feet from the east line of Section 24. Also to be considered will be the cost of drilling and completing the well and the allocation of the cost thereof, as well as actual operating costs and charges for supervision, designation of applicant as operator of the well, and a 200% charge for the risk involved in drilling and completing the well.
2. Case No. 14674: Burnett Oil Co., Inc. seeks an order pooling all mineral interests from 4230 feet subsurface to the base of the Glorieta-Yeso formation underlying the SE/4SE/4 of Section 13, Township 17 South, Range 31 East, NMMP, to form a standard 40-acre oil spacing and proration unit for all pools or formations developed on 40-acre spacing within that vertical extent. The unit is to be dedicated to the proposed Partition Fed. Well No. 2, to be drilled at an unorthodox location 990 feet from the south line and 1140 feet from the east line of Section 13. Also to be considered will be the cost of drilling and completing the well and the allocation of the cost thereof, as well as actual operating costs and charges for supervision, designation of applicant as operator of the well, and a 200% charge for the risk involved in drilling and completing the well.

Burnett/Hudson would like to end the skirmishes and promptly begin a prudent development program that can move forward without continuous interference from COG.

Issues: Based on the foregoing, the following issues are presented for the Division:

- I. There is no need to force pool 13 well locations at this time, as requested by COG. The four wells proposed by Burnett (two cases heard in May and two cases set for August 29th) are sufficient to commence operations in the Area as necessary to gather data for future development. Thus, COG's applications must be denied.
- II. Burnett/Hudson own or control 2/3's of the working interest in the Area, and thus under Division precedent Burnett must be granted operations. Moreover, to minimize surface use, only one operator should be named in the Area.
- III. Triple laterals are unproven and fraught with unproven technology. Burnett's production results in this portion of the Yeso trend shows that it can obtain better production results with verticals and single horizontal laterals than in COG's unproven proposals.

OPPONENT

PROPOSED EVIDENCE

APPLICANT

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
David S. Rhodes (land manager)	25 min.	Approx. 10
John Haiduk (geologist)	10 min.	Approx. 4
Mark Jacoby (engineering manager)	20 min.	Approx. 10
John Rodgers (drilling engineer)	15 min.	Approx. 4
Randall Hudson (geologist - operator)	15 min.	Approx. 2
Dan Lockwood (drilling engineer)	20 min.	Approx. 6

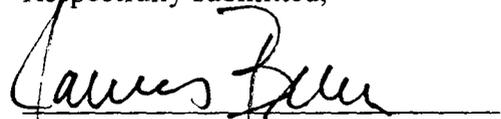
OPPONENT

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
------------------	------------------	-----------------

PROCEDURAL MATTERS

COG has informed Burnett/Hudson and the Division of a farmout arrangement with the Ard interests covering the Area which requires a well to be commenced every 45 days. This highly unusual arrangement is a further attempt to take control of the drilling program for these leases. However, COG has refused to provide the agreement to Burnett/Hudson. Burnett/Hudson have obtained a subpoena regarding production of the Ard farmout or term assignment, and after COG refused to produce it have filed a motion to compel. If the motion is not granted, then COG should be barred from testifying about such agreement.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Burnett Oil Co., Inc. and
Hudson Oil Company of Texas

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 24th day of August, 2011 by facsimile transmission and U.S. Mail:

Ocean Munds-Dry
Holland & Hart LLP
P.O. Box 2208
Santa Fe, New Mexico 87504
fax: (505) 982-6043


James Bruce

Chronology of COG/BOCI Contacts regarding Operatorship Issues-Maljamar

By: David Rhodes, Land Manager Burnett Oil Co., Inc. (revised 8-24-11)

<u>Date</u>	<u>Description of Event, phone call, etc.</u>
11/11/10	Randall Hudson (RH) owner of Hudson Oil of Texas received phone call from COG wanting TA of Hudson interests in the Maljamar area, Eddy County, NM.
11/12/10	David Rhodes (DR) and RH met with David Evans (DE), Ramon Reyes and Stuart Dirks of COG at RHs office. RH told COG they were supporting BOCI as operator for Maljamar.. We told them we had commitments for TA's and support from Hudson that would give BOCI a majority working interest. We hoped we could get a JOA signed and move forward with drilling soon.
1/6/11	On or about this date, DR called DE and left a voice message to call back to discuss drilling program and execution of a JOA. No response.
1/20/11	BOCI sent 2 well proposals to DE at Concho Resources, Inc. [Partition Fed 1 (SWSW 13) and Nosler Fed 3 (SESE 24)] via email, fax and certified mail. (Should have gone to COG Operating and Concho Oil & Gas). DE responded acknowledging receipt of email but couldn't open attachment. Wanted to know what it was.
1/21/11	DR responded to DE saying he had sent 2 AFE's for 2 Yeso wells. Also asked if he had received DR's phone message of a couple of weeks ago to discuss drilling program. No response.
1/24/11	BOCI and Hudson's received 32 well proposals from COG on the Maljamar leases totaling \$52,928,000.
2/7/11	DR sent 6 well proposals to COG (COG Operating and Concho Oil & Gas), including Partition Fed 2 and Nosler Fed 3 via certified mail
2/9/11	Bill Pollard, Burnett's president, sent letter to Tim Leach, President of COG, requesting that COG consent to let BOCI operate all wells on the leases.
2/17/11	BOCI and Hudson's received 7 more well proposals from COG (Puckett Fed 12 #53, 55, 56, 57, 60, 62, 63 under S/2 Sect 12 JOA) and 8 well proposals for wells in the N/2 of Section 12 (total well proposals from COG in 25 day period: 47 totaling \$ 77,738,00.00)
2/21/11	Tim Leach (TL) left voice message to Bill Pollard (BP) on his iPhone. TL apologized for being slow to respond to BP's letter of 2/9 but said he had been traveling. He wasn't up to speed on the issues but said he would get up to speed and respond. Bill P returned phone call to TL and left message.

EXHIBIT A

- 3/2/11** BOCI received notice COG has filed with NMOCD for allowable increase in 13 Pools in Eddy and Lea counties; DR received phone call in afternoon from David Evans of COG requesting early AM meeting next day in BOCI office requesting BOCI & HOCT agree to support their position.
- 3/3/11** COG personnel David Evans, Lead Landman – NM shelf, Keith Corbett – Engr & NM Shelf Team Leader meeting with Bill P, David R, Randall H, Mark Jacoby (MAJ) with COG asking BOCI & HOCT to agree to support their position. Bill P told them we wanted to get an agreement from COG to support BOCI as operator for all wells at Maljamar.
- 3/14/11** Bill P received letter from Matt Hyde with COG dated 3/10/11 responding to Bill's letter to Tim Leach. In the letter, MH said they own rights below base of San Andres and will pursue operations. They want to drill on 10 ac spacing.
- 3/25/11** Jim Bruce receive email from COG attorney informing him they has acquired the 10.8% Ard interest; MAJ phone conversation with Joe Wright, COO COG, discussing 45 day CDO at Maljamar Puckett. Joe W told MAJ he knew of BOCI's operations and wouldn't have a problem with BOCI operating at Maljamar. DR received email from David E saying he and Keith C would like to come to our office on 3/29 to discuss operations and development.
- 3/28/11** Joe Wright returned phone call to MAJ he promised in Friday conversation telling me David Evans to call David R to discuss issues, David E and COG personnel coming to BOCI office to discuss.
- 3/29/11** Meeting in BOCI office with COG - David Evans, Keith Corbett, Ramon Reyes (Geol – NM Shelf), BOCI – DR, WDP, MAJ + Randall Hudson – COG informed us they had taken a 6 month TA with a 45 day cdo from the Ards. BOCI indicated we would consider drilling 4 wells this year and 8 wells next year if they met our economic parameters. BOCI asked if we could get JOA on entire area. Keith said no. They would sign JOA on 40 by 40 acre basis.
- 4/1/11** DR received email from David E saying he was drafting another proposal that would require 4 wells this year and 8 wells next year. DR responded that we would look it over when received.
- 4/7/11** DR received email from David E saying he was working on the drilling proposal that would split drilling between BOCI and COG. DR responded that we were firm on wanting to operate all wells on the leases. DR informed David E we have a rig coming to Maljamar and need to get this resolved.

- 4/19/11 DR received email from David E saying he and Keith C want to bring proposal for development to us tomorrow.
- 4/20/11 David Evans and Keith Corbett came to FW and met with DR and MAJ. They left their proposal dated 4/20. BOCI can operate the wells with restrictions. They want 4 wells in 2011, adhere to 45 day cdo in 2012, 2013 etc. They want to hold out 3-160 acre spacing units where BOC and Hudson's will agree to sign a JOA with COG as operator so they can adhere to their 45 day cdo. The number of wells per year is "non-negotiable" per David E's email of 4-21-11.
- 4/25/11 DR responded to COG's proposal by saying it was unacceptable and since the pooling hearing was on Thursday (4/28) we were going to move forward with hearing so we could get started on our drilling program. Asked COG, again, to sign a JOA covering entire area, except S/2 of Sec 12, naming BOCI as operator and to vote for BOCI to succeed Hudson as operator under JOA for S/2 of Sec 12.
- 4/26/11 Jim Bruce received notification from COG attorney that yesterday COG had filed for a continuance to pooling hearing set for 4/28. Notified by David Brooks at OCD that pooling hearing set for 4/28 had been continued to 5/26.
- 5/12/11 Will Giraud, general counsel for COG, contacted Bob Grable, who was in Midland, and asked him to come by. He wanted to know what we wanted. Bob said to make us a proposal. That afternoon, Will sent Bob the same proposal that David Evans and Keith Corbett had left with DR and MJ at last meeting on 4/20.
- 5/25/11 Received email from COG transmitting 6 triple lateral well proposals at \$11,340,000 each (total of \$68,040,000).
- 5/26/11 Pooling Hearing for Partition Fed #1 and Nosler Fed #2 in Santa Fe. Still waiting on ruling.
- 5/27/11 Received via certified mail the 6 triple lateral well proposals we had gotten the email about on 5/25.
- 6/22/11 BOCI received 8 additional AFE's for triple laterals from COG at \$9,648,000 each totaling \$77,184,000. This brings the total number of AFE's received from COG since 1/24/11 to 61 totaling \$222,962,000.00.
- 6/23/11 Pooling hearing for Partition #2 and Nosler #3 in Santa Fe. Continued because we didn't have enough time to put on our case as other cases ran long. Continued until 7-21-11.
- 7/13/11 Jim Bruce forwarded, via email, a letter he received from OMD dated 7-12-11 requesting Cases 14691, 14673 & 14674 be continued and consolidated into a hearing

involving competing pooling applications by COG. Received notice of compulsory pooling hearing for 11 triple laterals previously proposed. Hearing to be on Aug 4, 2011.

- 7/14/11** Received 2 more notices of compulsory pooling hearing for triple laterals to be held on Aug 4.
- 7/26/11** Received email from Jim Bruce forwarding email from OMD telling R. Ezeanyim that COG wants her to request a hearing in front of the full commission and bypass the special hearing with the examiner. Mr. Ezeanyim set the special hearing date for August 29th unless the commission decides to hear the case.
- 7/27/11** OMD filed to have all BOC and COG pooling applications consolidated and heard by the full commission on Aug 25, 2011 (this came to BOC via fax from J. Bruce on 7/28)
- 8/6/11** J. Bruce notified us via email that the OCD denied COG's request for Commission hearing.
- 8/8/11** We received 3 new AFE's for triple lateral wells and 3 amendments to previously sent triple lateral AFE's from COG.
- 8/9/11** Received 1 new well proposal from COG for another triple lateral along with 3 amendments of previously submitted triple laterals. J. Bruce sent Subpoena to COG via OMD for copy of Ard TA.
- 8/11/11** Received Subpoena from COG via J. Bruce for materials related to pooling hearing on Aug 29th.
- 8/15/11** Received 9 amendments of previously proposed triple laterals from COG.